

**Letter of Findings Number: 01-20130596P
Tax Administration
For Tax Year 2012**

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ISSUE

I. Tax Administration—Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#); IC § 6-8.1-6-1.

Taxpayers protest the imposition of a ten percent penalty.

STATEMENT OF FACTS

Taxpayers are individuals. Taxpayers made regular estimated payments of Indiana individual income tax throughout 2012. Taxpayers obtained an extension to file their 2012 federal income tax return and paid \$10,000 in Indiana individual income tax before April 15, 2013, to obtain an extension to file their Indiana individual income tax return.

An S-Corporation, in which Taxpayers had a partial interest, held an LLC that was involved in negotiations regarding its one asset, a commercial building. Taxpayers report that they were not involved in these negotiations. On May 6, 2013, Taxpayers received a 1099-A for the S-Corporation reporting significantly more income than Taxpayers anticipated. Taxpayers report that this additional income resulted from the LLC's negotiations. Taxpayers filed their individual income tax return and paid the tax due on August 22, 2013.

The Indiana Department of Revenue ("Department") determined that Taxpayers had underpaid the individual income tax and assessed Taxpayers with a ten percent negligence penalty and interest calculated on the unpaid tax amount. Taxpayers protest the imposition of the penalty. An administrative hearing was held, and the following Letter of Findings results. Further facts will be supplied as required.

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DISCUSSION

The Department determined that Taxpayers had underpaid their individual income tax and assessed Taxpayers with a ten percent negligence penalty, which Taxpayers protest. The Department will determine whether the penalty imposed shall be waived.

A taxpayer who "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment . . . is subject to a penalty." IC § 6-8.1-10-2.1(a). The Department shall waive the negligence penalty if the taxpayer demonstrates that the failure to pay the outstanding taxes "was due to reasonable cause and not due to negligence." [45 IAC 15-11-2](#); see also IC § 6-8.1-10-2.1(d). A taxpayer's ignorance of Indiana's tax laws, "carelessness, thoughtlessness, disregard or inattention to duties placed on [it] by the Indiana Code or department regulations" constitutes negligence. The taxpayer may demonstrate reasonable cause by showing affirmatively that it used "ordinary business care and prudence" in not paying the outstanding taxes. Whether a taxpayer demonstrates reasonable cause for penalty purposes is a fact-sensitive question and determined on a case-by-case basis. [45 IAC 15-11-2](#)(b) and (c).

In this case, Taxpayers affirmatively demonstrated that they had reasonable cause for the underpayment of tax. Taxpayers obtained an extension to file their federal income tax return and made an additional payment that, when added to the estimated payments made in 2012, totaled ninety percent of the income tax they reasonably expected to be due on the original due date, April 15, 2013. They would have reasonably believed the deadline to file their Indiana individual income tax return was automatically extended to November 15, 2013, pursuant to IC § 6-8.1-6-1(c).

Taxpayers received notification after the April 15, 2013, deadline that the income reported from an S-Corporation in which they had a partial ownership interest was significantly more than Taxpayers anticipated. Taxpayers did not participate in and could not control the underlying LLC's ongoing negotiations leading to this increase in income. Additionally, they could not control when the information was distributed to the S-Corporation owners. Upon receiving the information, Taxpayers filed their Indiana individual income tax return with this new information and paid the total amount of tax due. They did so well before the anticipated extended deadline date of November 15, 2013.

Taxpayers' underpayment of income tax resulted from actions of other parties outside their control and not their own negligence. Upon receiving the new information, Taxpayers acted promptly to report and pay the additional tax liability. Taxpayers demonstrated reasonable cause for their underpayment of tax, and the penalty shall be waived. Taxpayers' protest is sustained.

FINDING

Taxpayers' protest is sustained.

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